

Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Beverage Distributors, Inc. and R. L. Lipton Distributing Co., Inc.) and Peter Perillo and William J. Staursky and Dan Vlahovic, Jr.
Cases 8-CB-6635, 8-CB-6637, and 8-CB-6649

March 29, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On September 11, 1990, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Cleveland, Ohio, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Mark F. Neubecker, Esq., for the General Counsel.

John M. Masters, Esq. and *S. Randall Weltman, Esq.*, of Cleveland, Ohio, for the Respondent.

William E. Sweeney, Esq. and *Robert E. Davis, Esq.*, of Cleveland, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. These consolidated cases were heard at Cleveland, Ohio, on June 12 and 13, 1990. The charges were filed respectively on January 4, 5, and 22, 1990, by individuals Peter Perillo, William J. Staursky, and Dan Vlahovic Jr. The consolidated complaint, which issued on February 16, 1990, alleges that Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO (Union or Respondent) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. The gravamen of the complaint, stated succinctly, is that the Union allegedly engaged in threats and coercive statements,

caused Perillo, Staursky, and Vlahovic to lose employment because of their association with candidates running in opposition to the Union's incumbent officers in an intraunion election, and operated an exclusive hiring hall in a discriminatory and arbitrary manner. The Union's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. General Counsel and the Union each filed a brief.

On the entire record in this case and from my observation of the demeanor of the witnesses, and having considered the arguments and briefs submitted by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS INVOLVED

Beverage Distributors, Inc. (Beverage) and R. L. Lipton Distributing Co., Inc. (Lipton), each corporations with an office and place of business in Cleveland, Ohio, are each engaged in business as a beverage distributor. In the operation of their respective businesses, Beverage and Lipton each annually sells and ships from its Cleveland facility products valued in excess of \$50,000 directly to points outside of Ohio. Beverage and Lipton are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE RESPONDENT UNION AND ITS AGENTS

The Union, which maintains its office and hiring hall in Cleveland, Ohio, is a labor organization within the meaning of Section 2(5) of the Act. James Petrucci is the Union's secretary-treasurer. He is in fact the Union's chief operating officer. (In addition to testimony adduced in this proceeding, I have taken administrative notice of the usual practice within Teamsters Union locals, whereby the secretary-treasurer functions as the chief operating officer.) Keith Kloss is the Union's head dispatcher, and in that capacity is responsible for day-to-day operation of the hiring hall, subject to instructions from the Union. Kloss was appointed by the secretary-treasurer, who also has the power to remove him. The complaint alleges and the answer admits that Petrucci and Kloss were at all times material and are agents of the Union within the meaning of Section 2(13) of the Act. The Union also has stewards at employer facilities. The Union's bylaws state that the stewards "shall have such duties as the Executive Board or President and Business Manager may assign to them from time to time."

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Preliminary Statement

General Counsel presented 11 witnesses: the 3 alleged discriminatees, 2 other employees, 3 employer supervisors, 2 nonemployees who testified concerning alleged statements by Secretary-Treasurer Petrucci, and head dispatcher Kloss. The Union did not present any witnesses and did not question Kloss, who was the only union agent called as a witness. The Union's presentation substantially consisted of cross-examination of General Counsel's other witnesses, and one exhibit, specifically, a collective-bargaining contract which ex-

pired prior to the events of this case. For reasons which will be discussed, General Counsel presented a prima facie case as to all allegations of the complaint, which has not been rebutted by the Union.

B. The Union's Referral System

The complaint alleges that since on or about July 5, 1989,¹ the Union and Beverage and Lipton have maintained and enforced an agreement, arrangement or practice requiring that the Union be the sole and exclusive source of referrals of employees for employment with Beverage and/or Lipton, and/or the Union has administered the agreement so as to make it the exclusive source of referrals of employees for employment with Beverage and/or Lipton. I find that the Union has maintained and enforced an arrangement and practice requiring the Union to be the exclusive source of referrals of employees for employment with Beverage and Lipton, and has administered that arrangement.

The Union was at the times material party to a collective-bargaining contract with Cuyahoga County Beer Distributors Association, Inc. ("beer contract") effective June 1, 1987, through May 31, 1990, covering employees of various beer distributors in the Cleveland area, including Beverage and Lipton. The Union is also party to a separate collective-bargaining contract, effective from May 1, 1989, to April 30, 1992, covering employees of soft drink distributors in the Cleveland area ("pop contract"). Both contracts contain the following language under union security:

The Union recognizes that the Employer has the unqualified right to seek applicants for employment from any source or sources selected by the Employer. The Union also recognizes that the Employer has the unqualified right to accept or reject any applicant from any source. However, should a vacancy exist that cannot be immediately filled by applicants presently available and qualified, the Employer agrees to notify the Union of the existence of such vacancies and the Union may refer applicants for employment to the Employer. There shall be no discrimination, based on or affected by membership or nonmembership in the Union among applicants referred by the Union or by any other source. The Union also agrees that this contractual provision shall be posted in any hiring hall that it may operate and shall be brought to the attention of any applicant referred to the Employer prior to such referral.

On its face, the contract provision does not purport to designate the Union as an exclusive source of referral of employees. In practice, the Union has been and is the exclusive referral source. August DiMario is Beverage's vice president for operations and is responsible for the hiring of casual labor. DiMario frankly testified that Beverage always calls the union hall first, and hires from the outside only when the Union cannot supply employees. Lipton General Manager Steve Eisenberg has overall responsibility for hiring at his firm. Eisenberg was more equivocal than DiMario. Eisenberg testified that Lipton normally seeks temporary help through the union hall. However, Eisenberg admitted that Lipton cannot determine its need for casual labor until the last minute,

i.e., the evening before such labor is needed. Therefore Lipton will call the union hall because there is no other source of labor on such short notice. Both DiMario and Eisenberg testified concerning a practice which plainly demonstrates the nature of the arrangement between the Union and the employers. This is the practice of the "summer pass." During the busy summer season Beverage and Lipton require additional help. Many are college students. The employers may obtain them through personal reference, e.g., by friends or relatives. At the outset of the busy season, Beverage and Lipton each compile a list of these prospective employees, which is given to the Union. If the list is insufficient to meet the employer's need, Secretary-Treasurer Petrucci will suggest additional names. Before beginning work the employee must report to the union hall and obtain a summer pass, which authorizes the employee to work during the busy season, from mid- or late May through the Labor Day weekend. Without such a pass, the employee cannot work for the employer. The Union also issues weekly passes, which authorize casual labor to work by the week. DiMario testified that all casual help, whether or not summer help, must obtain a permit from the union hall before commencing work. In sum, all casual help, regardless of their source, must obtain clearance and authorization from the union hall in order to work. Therefore in practice the Union functions as the exclusive source of referral for casual labor. "Where an exclusive hiring hall arrangement exists in practice there is no requirement that the arrangement be embodied in a written contract." *Plumbers Local 17 (FSM Mechanical)*, 224 NLRB 1262 fn. 6 (1976), *enfd.* 575 F.2d 585 (6th Cir. 1978). The present complaint alleges in part that the Union unlawfully requested Lipton to terminate employees Staursky and Vlahovic, and unlawfully requested Beverage to refuse to recall employee Perillo. Insofar as these allegations are concerned, it is immaterial whether the Union and the employers had an exclusive hiring arrangement. However the arrangement is material to allegations that the Union operated its hiring all in a discriminatory and arbitrary manner, and thereby coerced and restrained job applicants and registrants including Staursky, Vlahovic, and Perillo.

Union head dispatcher Kloss testified in sum as follows: He has a desk at the union hall, and works at the hall from 6 a.m. to 3 p.m. He keeps a daily sheet. As applicants come in he writes down names. However he does not write down the names of all applicants. He does not enter the names of those whom he regards as casuals "off the street," or "the guys that drift over from Manpower or what have you," or "stumblebums" or "winos." He is aware of "which guys are permitted to go to which companies, which guys aren't," but he has no written records in this regard. He does not refer applicants in the order in which their names appear on his list. That order is irrelevant to his operation. If a beer distributor calls, he may not refer available applicants, but may instead wait to hear from a soft drink distributor. (As will be discussed, casual employment with a beer distributor is regarded as preferable to work with a soft drink distributor.) Kloss favors and gives preference to union members. However, he may throw a bone to a nonmember, i.e., if a nonmember shows up at the hall everyday, he might try to get him at least one day's work per week. Kloss may also give preference to a nonmember who has better qualifications than an available union member, e.g., the nonmember can

¹ All dates herein are for 1989 unless otherwise indicated.

drive but the member does not. On the basis of Kloss' own testimony, and without even taking into consideration the specific evidence concerning the alleged discriminatees (which will follow), it is evident that as alleged in the complaint, the Union operates its exclusive hiring hall in an arbitrary and discriminatory manner.

C. Alleged Unlawful Statements and Discriminatory Conduct Involving Staursky, Vlahovic, and Perillo

Intraunion elections were scheduled to take place in November 1989. That summer Wayne Adamany was working as a relief driver for Beverage. In July he gave serious consideration to getting involved in union politics. Adamany told Recording Secretary Charlie Passe that he was thinking about running in the election. By the end of July Adamany decided, definitely, to run against Petrucci for secretary-treasurer, and he put together a slate of candidates to run with him. William Staursky agreed to run with him as a candidate for one of three trustee positions. Adamany did not then make a formal announcement of his candidacy. However in August he talked to other union members about the election. Staursky also talked about his candidacy to members, including several stewards. By mid-August it was general knowledge among the Union's membership that Adamany was running for secretary-treasurer, and that Staursky was on his slate. Vlahovic and Perillo were not involved in the campaign. However, Vlahovic was Staursky's brother-in-law, and Perillo regularly rode to work at Beverage with Adamany.

Staursky began working out of the union hall in 1984, and joined the Union that year. Staursky worked for various beer distributors, always out of the hall. Beginning in 1985 he worked almost exclusively for Lipton. Staursky's status was that of a casual employee. However, he worked steadily for Lipton from the summer of 1988 until September 1, 1989. He did not need a summer pass, or to return to the hall for referral. Rather he was simply carried over from day to day. Lipton was satisfied with his performance. Staursky worked either as a driver or a helper. He earned about \$450 to \$500 per week as a driver and about \$250 to \$300 per week as a helper. Lipton paid for his health and welfare coverage and gave him holiday pay. Vlahovic also joined the Union in 1984 and began working out of the hall for various beer distributors. Initially he received summer passes. Beginning in April 1986 he joined Staursky in working at Lipton. Like Staursky, he had the status of a casual employer, but was carried over from day to day. He worked as a helper and later as a driver. At one time Lipton sent him back to the hall because of poor work. However, he worked well with his driver, who requested that he be recalled from the hall. Lipton agreed and Vlahovic thereafter worked steadily for Lipton. He earned about \$400 to \$500 per week as a driver and about \$350 to \$400 per week as a helper, including overtime. Lipton also paid for his health and welfare coverage.

During the last week of August, Lipton Driver-Supervisor Joseph Doljack told Staursky and Vlahovic (in separate conversations) that they would not be working for Lipton after Friday, September 1, because the Union called to send them back to the hall. He said he had nothing to do with it. He told Vlahovic that he could not understand it, because Vlahovic was one of his better workers. Doljack initially told Staursky that he did not know why they were called back.

However, on being pressed by Staursky, Doljack expressed the opinion that it was for "political reasons," because of Staursky's campaign.² Staursky and Vlahovic were the only Lipton employees returned to the hall. No one from either the Union or Lipton told them that their return had anything to do with a need for drivers at Pepsi Cola.

Dan Vlahovic Sr., Vlahovic's father, worked in the industry for many years, was a union member and chief steward at Beverage, and knows Secretary-Treasurer Petrucci. When Vlahovic Sr. learned that his son was terminated, he called Petrucci (and put his daughter, Cheryl Staursky, on the line). Vlahovic Sr. asked why his son was taken off the job. Petrucci answered that it was "because of Bill Staursky running against me on my slate." Petrucci added that Vlahovic would not be able to work anymore. When Vlahovic Sr. protested, Petrucci began yelling and swearing, demanding to know "who the f--- Bill Staursky think he is." I credit the testimony of Vlahovic Sr. and Cheryl Staursky, and I find that Petrucci's statements establish the real reason why the Union caused Vlahovic and Staursky to be terminated at Lipton, and why the Union subsequently failed and refused to refer them to beer distributors, and allowed them to obtain only sporadic employment with soft drink distributors.³

Staursky testified in sum as follows: He reported to the union hall the day after Labor Day (September 5) at 6 a.m., and gave his name to Kloss. There were some 40 to 50 applicants. Many were sent out, but after Kloss made the last dispatch, Staursky was still sitting there. The same thing happened on September 6. On September 7 Staursky asked if this would be a regular thing. Kloss responded that there was nothing he could do, that "this election thing is getting out of hand." Kloss added that he hoped Staursky lost because otherwise Kloss' job would be in jeopardy. On September 8 Kloss gave Staursky a 1-day pass to work on a Pepsi Cola truck. Staursky had not worked for a soft beverage firm since 1984. Thereafter Staursky worked intermittently on 1-day passes for Pepsi Cola, and 1-day passes for Coca Cola. The Union never referred Staursky to a beer distributor, although (as testified by Supervisor Doljack) Lipton continued to obtain referrals from the Union. Doljack told Staursky that in November he requested the Union to refer Staursky, but Kloss said he would send someone else. At the October union meeting Staursky asked why Petrucci was blackballing him. Petrucci avoided giving an answer. Staursky's income dropped sharply. The soft beverage companies also did not pay for his health and welfare coverage. As a result Staursky had to pay for his own coverage. Staursky could not afford this expense. Therefore he stopped going to the union hall, and eventually found employment outside the bargaining units.

²I credit Staursky's testimony concerning their conversation, and I do not credit Doljack's testimony that even at this late date he did not know about Staursky's campaign. Doljack was obviously reluctant to testify about the matter. Doljack initially testified that he did not remember discussing recall of Staursky and Vlahovic with dispatcher Kloss. However, on being confronted with his affidavit, Doljack testified that Kloss told him they were to be sent back to the hall, and that he was surprised to hear this.

³Cheryl Staursky initially testified that Petrucci said that neither of them could work anymore, but subsequently admitted that Petrucci specifically referred to Vlahovic. However, it is evident not only from Petrucci's remarks, but also from the other evidence in this case, that Petrucci's explanation applied to both Staursky and Vlahovic.

Dan Vlahovic testified in sum as follows: He reported to the hall on September 5, gave his name to Kloss, and asked Kloss why he was sent back to the hall. Kloss answered that there was nothing he could do, that his hands were tied. Vlahovic was not referred out that day. He reported daily to the hall until November 20. Kloss did not always write down his name. Vlahovic got work about 2 or 3 days each week, mostly for Pepsi Cola as a helper delivering vending machines. Vlahovic worked a total of 3 days for beer distributors (not Lipton) during the period from September 5 to November 20. Several times he and Staursky were the only applicants who were not referred. Vlahovic's average income dropped to take home pay of about \$105 per week. Vlahovic had to pay for his own health and welfare coverage. He stopped going to the hall because he was discouraged by lack of work, substantially reduced income, and lack of paid health and welfare coverage.

Head dispatcher Kloss testified in sum as follows: Business Agent Charlie Passe told him that at the end of summer Pepsi Cola would be sending its employees to semi school because they were switching to a new bulk system. This would continue until Christmas. Pepsi Cola needed at least 20 replacement drivers during this period, and the Union was unable to supply that many. Kloss told Supervisor Doljack to send Staursky and Vlahovic back to the hall, because Pepsi was changing its system and needed them. Doljack agreed. Kloss selected Staursky and Vlahovic because they were qualified drivers. He did not know that Staursky was running in the union election, although there were rumors. Kloss did not testify that anyone other than Staursky and Vlahovic was recalled from Lipton, although other casual employees were working at Lipton. Kloss also testified that it was standard procedure for employers to return summer help to the hall before Labor Day, in order to avoid giving holiday pay. Even if true, this would not apply to Staursky and Vlahovic, because they were not working on summer passes, and Lipton regularly gave them holiday pay. Kloss' explanation was uncorroborated by any other witness. Although Eisenberg and Doljack of Lipton were called as witnesses, neither testified that Kloss gave this reason for recalling the two employees. No one from Pepsi Cola was called as a witness. Kloss did not deny the testimony of Staursky and Vlahovic concerning his statements to them and the events which occurred on and after September 5. In light of Petrucci's on statements to Vlahovic Sr., Kloss' explanation was demonstrably false.

Peter Perillo began working out of the union hall and joined the Union in 1972. In 1984 he took out an honorable withdrawal card when he moved to Florida. Perillo returned to Cleveland in April 1989 and asked about returning to the industry. Steward Victor Miskow arranged a meeting with Secretary-Treasurer Petrucci. Perillo asked if he could work out of the hall. Petrucci said he could and to report to the hall. Perillo asked about reinstatement of his union card. Petrucci told him not to worry about it, and it would take about 90 days to get health and welfare benefits. Petrucci joked that he might send Perillo to Cotton Club (a soft beverage firm). Petrucci then said he would get Perillo a summer permit for House of LaRose or Beverage (both beer distributors). Perillo never got the pass. Petrucci told him to keep his nose clean. The following day, a Friday, Perillo reported to the union hall. Ray Merad, who knew Perillo, was

functioning as dispatcher in place of Kloss. Merad referred Perillo to a job. On Monday Perillo again reported to the hall. Kloss was back as dispatcher. Kloss referred other applicants, but did not refer Perillo. Perillo complained to Steward Miskow, who said he would check with Petrucci. After making a call, Miskow said Petrucci would let him work. The next day Kloss referred Perillo to a job at Lipton. The following day Kloss referred him to Beverage. Perillo was held over at Beverage and worked regularly there for about 5 months, until September 22.

On September 22 Beverage dispatcher Eddie Mann told Perillo that he would have to return to the hall because they were calling back the helpers. About 20 casual employees (all but 4 or 5) were called back to the hall. Macon gave no explanation. Perillo reported back to the hall on Monday, September 25, and was the first or second to check in. There were about 35 applicants. Kloss called all but Perillo and "four, maybe five black men." About 7:10 a.m. Kloss answered the telephone. Perillo heard him say that he did not think anyone was there, but would check. Kloss walked past Perillo, returned to the telephone, and said: "No, there's nobody here." At 7:15 a.m. Kloss told the remaining applicants there was nothing left. Perillo then drove to Beverage where he found that 90 to 95 percent of the casuals who returned to the hall with him were now back at work. Perillo then returned to the union hall and asked about reinstatement of his union card and the amount needed to maintain health and welfare coverage. The office clerk in charge of dues receipts informed him that only Petrucci could authorize reinstatement, and he was out of town. The next day Kloss gave Perillo a form application for reinstatement, and referred him for 1 day to Knoll Distributing, a beer distributor. Max Zembla, the union steward at Knoll, told Perillo that he called the union hall at 7:10 a.m. the previous day for a helper, but Kloss said no one was available. The next day Kloss said the Union was not reinstating Perillo's card. He did not refer Perillo to work that day, although other applicants who arrived later were referred. Perillo went to see Petrucci. Kloss was present. Perillo asked why he could not have his card reinstated. Petrucci answered that Perillo did not have a steady job. Perillo countered that this was not a valid reason. (The Union's rules provide that reinstatement may be denied for (1) action detrimental to the Union, (2) lack of work, and (3) ill health.) Petrucci said he was not now reinstating cards. Perillo asked what was his other problem, and specifically, why Perillo was not working. Petrucci answered: "I heard who you've been riding to work with, who you've been talking to, and who you've been having your meetings downtown with." Perillo protested that he rode to work with Adamany because he did not have an available car, had known him for 20 years, and did not want to get mixed up in politics. Perillo asserted that who he spoke to was none of Petrucci's concern. At this point Petrucci became visibly angry and declared: "If you ride to work with them guys and you hang around with them and you talk to them, you're friends with them that means you're not my friend. If you're not my friend, you don't work in this industry again." Because of what Petrucci said, Perillo did not again return to the hall.

Dispatcher Kloss, in his testimony, offered no explanation for the Union's recall of Perillo, beyond the false explanation, previously discussed that casual employees were rou-

tinely sent back to the hall before Labor Day so employers could avoid giving them holiday pay. Secretary-Treasurer Petrucci's own statements to Perillo establish the real reason why Perillo was recalled to the hall, and, as with Staursky and Vlahovic, the Union determined to thereafter deprive Perillo of work, or give him so little as to deprive him of a livelihood and thereby force him out of the industry. The nominal mass recall of casuals from Beverage on September 22 was simply a sham to cover the forced termination of Perillo.

I find that the Union arbitrarily and discriminatorily attempted to cause and caused Lipton to terminate Staursky and Vlahovic and Beverage to terminate Perillo because Staursky was a candidate on a slate running in opposition to Petrucci's slate in the intraunion election, because Vlahovic was Staursky's brother-in-law, and because Perillo was a friend of and associated with Wayne Adamany, who headed the opposition slate. The Union thereby violated Section 8(b)(1)(A) and (2) of the Act. The Union, by Petrucci, further violated Section 8(b)(1)(A) by threatening Perillo with loss of employment opportunities and referrals because of his association with Adamany. The Union, by Kloss, also violated Section 8(b)(1)(A) by indicating to Staursky and Vlahovic that the Union recalled them from Lipton because of Staursky's candidacy. I further find that the Union violated Section 8(b)(1)(A) and (2) by failing and refusing to refer Staursky, Vlahovic, and Perillo to employment with Lipton, Beverage and other beer distributors for the above unfair, arbitrary, irrelevant, and discriminatory reasons. I further find that the Union violated Section 8(b)(1)(A) and (2) by operating its exclusive hiring hall in an arbitrary and discriminatory manner, failing to use objective criteria or standards for referral, failing to provide information regarding referrals to applicants concerning criteria for selection, failing to use or maintain an out-of-work list, or other formal written records, or making accurate or verifiable records of hiring hall referrals, failing and refusing to grant job referrals to applicants and registrants on an equal and nondiscriminatory basis, and discriminating against applicants and registrants on the basis of union membership or nonmembership, union political activity, personal associations, and other unfair, arbitrary, irrelevant, and discriminatory reasons.⁴ *Fruin-Cohnin Corp.*, 227 NLRB 59, 67-68 (1976), *enfd.* 571 F.2d 1017, 1023 (8th Cir. 1978); *Operating Engineers Local 513 (S. J. Groves & Sons)*, 199 NLRB 921 (1972), *enfd.* 85 LRRM 2303 (8th Cir. 1973).

CONCLUSIONS OF LAW

1. Beverage and Lipton are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By attempting to cause and causing Lipton to terminate William Staursky and Dan Vlahovic Jr., and Beverage to terminate Peter Perillo, for reasons other than their failure to

⁴As indicated, Perillo testified that on September 25, Kloss called all of about 35 applicants for work, except for himself and 4 or 5 black men. In view of the arbitrary manner in which the Union operated its hiring hall, including favoritism based on the likes and dislikes of Petrucci and Kloss, it is evident that whether or not intentional, this system may have operated adversely to minority applicants. It appears that the Board is not the only agency which should be interested in the operations of this Union.

tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union, by discriminatorily failing and refusing to refer Staursky, Vlahovic, and Perillo for employment by Lipton, Beverage, and other beer distributors who are parties to exclusive hiring hall arrangements with the Union for unfair, arbitrary, irrelevant, and discriminatory reasons, and by operating its exclusive hiring hall in an arbitrary and discriminatory manner, the Union has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By threatening employees with loss of job opportunities and referral for unfair, arbitrary, irrelevant, and discriminatory reasons, and by telling them that the Union caused their termination for reasons other than their failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union, the Union has further violated Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union has violated and is violating Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be required to cease and desist from such violations and take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Union be ordered to make whole Peter Perillo, William J. Staursky, and Dan Vlahovic Jr. for any loss of earnings, and loss of health and welfare, holiday pay, and any other benefits they may have suffered from the time of their termination by Beverage and Lipton, respectively, until each employee is either reinstated by his employer to his former or substantially equivalent position or until the employee obtains substantially equivalent employment elsewhere. *Sheet Metal Workers Local 355 (Zinsco Electrical)*, 254 NLRB 773, 774 (1981), *enfd.* as modified in other respects 716 F.2d 1249 (9th Cir. 1983). Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*.⁵ In light of the discriminatees' employment history, it is evident that in the absence of the Union's discrimination against them, they would have been carried over from day to day so long as the respective employers, Beverage and Lipton, needed casual labor. Backpay shall be computed accordingly. *K-Mechanical Services*, 299 NLRB 114 *fn.* 3 (1990). I reject the Union's argument that the discriminatees willfully incurred loss of earnings by failing to directly apply for employment with unit beer distributors, or by their actions in eventually not returning to the union hall. The Union had exclusive referral arrangements with the distributors, engaged in a discriminatory cause of conduct which was designed to deny substantial employment to the discriminatees, and so informed them either directly or indirectly. Therefore it would have been futile for the discriminatees either to directly seek employment with the distributors or to continue registering at the union hall. In order to assure that the

⁵283 NLRB 1173 (1987). Interest will be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

discriminatees be fairly compensated for their losses, I shall recommend that the Union be barred from assessing them for legal fees and expenses incurred in defending this case and for the payment of backpay. *Laborers Local 282 (Millstone Construction)*, 236 NLRB 621, 644 (1978).

I shall further recommend that the Union be ordered: to notify Staursky, Vlahovic, and Lipton that it has no objection to Staursky and Vlahovic being hired; to notify Perillo and Beverage that it has no objection to his being hired; to refer Staursky and Vlahovic to Lipton at the next opportunity; and to refer Perillo to Beverage at the next opportunity. *Boilermakers Local 587 (Stone Webster)*, 233 NLRB 612 (1977); *Sheet Metal Workers Local 355*, supra at 774. I shall also recommend that the Union be ordered to operate its exclusive referral procedures so as to register and refer all job applicants on a nondiscriminatory basis. The Union shall also be ordered to maintain a book or semipermanent type of record to reflect accurately, fairly, and nondiscriminatorily, the operation of the referral system from the hiring hall, and for a period of 1 year disclose to the Regional Director for Region 8, or his agents, the manner of operation of the hiring hall. *Boilermakers Local 587*, supra. To facilitate the computation of backpay and assure equal referral treatment, the Union shall maintain and make available for the Board or its agents, on request, out-of-work lists, referral slips, membership records, and any other documents and records showing job referrals and the basis for such referrals of employees, members, and applicants. I further recommend that the Union be ordered to post appropriate notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Cleveland, Ohio, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Beverage Distributors, Inc., Lipton Distributing Co., Inc. or any other employer to terminate, deny employment to, or in any other manner to discriminate against Peter Perillo, William J. Staursky, Dan Vlahovic Jr., or any other employee or applicant in violation of Section 8(a)(3) of the National Labor Relations Act.

(b) Refusing to refer the above-named individuals or any other employee or applicant for employment because of candidacy in intraunion elections, their association with or relation to candidates, or any other unfair, arbitrary, irrelevant, or discriminatory reason.

(c) Threatening employees or applicants with loss of job opportunities or referrals for unfair, arbitrary, irrelevant, or discriminatory reasons, or telling them that the Union caused their termination for reasons other than their failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

(d) Arbitrarily refusing to honor requests for information by employees or applicants who have reasonable need there-

for, pertaining to the exclusive referral system operated by the Union.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Refrain from assessing any of the above-named discriminatees for legal fees or expenses incurred in defending this case or for the payment of backpay.

3. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Operate its exclusive hiring hall in a nondiscriminatory manner.

(b) Inform William J. Staursky, Dan Vlahovic Jr., and R. L. Lipton Distributing Co., Inc. that it has no objection to Staursky and Vlahovic being hired or retained, and refer Staursky and Vlahovic to Lipton at the next opportunity.

(c) Inform Peter Perillo and Beverage Distributors, Inc. that it has no objection to Perillo being hired or retained, and refer Perillo to Beverage at the next opportunity.

(d) Make whole Staursky, Vlahovic, and Perillo for any loss of earnings and benefits they may have suffered by reason of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Maintain a book or semipermanent type of record to reflect accurately, fairly, and nondiscriminatorily, the operation of the referral system from the hiring hall, and for a period of 1 year disclose to the Regional Director for Region 8, or his agents, the manner of operation of the hiring hall.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its business offices, hiring hall, and meeting places copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL NOT cause or attempt to cause Beverage Distributors, Inc., Lipton Distributing Co., Inc., or any other employer to terminate, deny employment to, or in any other manner to discriminate against Peter Perillo, William J. Staursky, Dan Vlahovic Jr., or any other employee or applicant in violation of Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT refuse to refer the above-named individuals or any other employee or applicant for employment because of candidacy in intraunion elections, their association with or relation to candidates, or any other unfair, arbitrary, irrelevant, or discriminatory reason.

WE WILL NOT threaten employees or applicants with loss of job opportunities or referrals for unfair, arbitrary, irrelevant or discriminatory reasons, or tell them that we caused their termination for reasons other than their failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

WE WILL NOT arbitrarily refuse to honor requests for information by employees or applicants who have reasonable need therefor, pertaining to the exclusive referral system operated by the Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL refrain from assessing any of the above-named discriminatees for legal fees or expenses incurred in defend-

ing the unfair labor practice case or for the payment of back-pay.

WE WILL operate our exclusive hiring hall in a non-discriminatory manner.

WE WILL inform William J. Staursky, Dan Vlahovic Jr., and R. L. Lipton Distributing Co., Inc. that we have no objection to Staursky and Vlahovic being hired or retained, and refer Staursky and Vlahovic to Lipton at the next opportunity.

WE WILL inform Peter Perillo and Beverage Distributors, Inc. that we have no objection to Perillo being hired or retained, and refer Perillo to Beverage at the next opportunity.

WE WILL make whole Staursky, Vlahovic, and Perillo for any loss of earnings and benefits they may have suffered by reason of the discrimination against them.

WE WILL maintain a book or semipermanent type of record to reflect accurately, fairly, and nondiscriminatorily, the operation of the referral system from the hiring hall, and for a period of 1 year disclose to the Regional Director for Region 8, or his agents, the manner of operation of the hiring hall.

TEAMSTERS LOCAL UNION NO. 293, A/W
INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN &
HELPERS OF AMERICA, AFL-CIO